

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

TERENCE A. JOHNSON v. SATURN CORPORATION

**Direct Appeal from the Chancery Court for Davidson County
No. 96-3616-III Ellen Hobbs Lyle, Chancellor**

**No. M1999-01377-WC-R3-CV - Mailed - July 19, 2000
Filed - August 21, 2000**

The employer, Saturn Corporation, contends the evidence preponderates against the trial court's findings as to causation and notice.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Affirmed.

LOSER, SP. J., delivered the opinion of the court, in which BIRCH, J., and CANTRELL, SP. J., joined.

Thomas H. Peebles and Caroline Thomas Trost, Columbia, Tennessee, for the appellant, Saturn Corporation.

Gary R. Gober and Stephen W. Elliott, Nashville, Tennessee, for the appellee, Terence A. Johnson.

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. As discussed below, the panel has concluded the judgment should be affirmed.

In 1993, the employee or claimant, Johnson, developed right carpal tunnel syndrome from repetitive work at Saturn. Corrective surgery was performed by Dr. David Gaw. His claim was settled in 1995 and he continued working for Saturn, while experiencing severe pain in his left arm and residual pain in his right arm. In August of 1995, he was assigned a self paced job using a power screwdriver to insert a screw into a bore in power steering brackets, then remove the screw. Some of the screws were defective. He performed the task several hundred times per day.

When a screw was defective, the screwdriver would jam, causing both arms to twist. The claimant estimated this would happen two hundred times a day, each time twisting and shocking his arms. He described the feelings as "tingling sensations going in both hands, electrical shocks going

up and down my arm and numbness in both elbows." After the first time, he "got the jerking feeling" in his neck, he started using his left hand to operate the screwdriver. He told his supervisor, Steve Hunter, "every day" that the work was causing severe pain and that he believed it violated his medical restrictions, which he understood to prohibit frequent gripping and the use of vibrating power tools. Mr. Hunter told him to do his work or be fired.

The claimant also reported his pain to another supervisor, LaVada Williams, and to nurses at Saturn's Initial Care Facility. The nurses made a notation of his complaint on August 18, 1995. They also referred him to the Middle Tennessee Bone and Joint Clinic, where he saw Dr. Douglas Wilburn, who advised him to refrain from the continual use of power tools. When he returned to work, he was assigned the same job. At a follow-up appointment, Dr. Michael Muha diagnosed a radiculopathy, flare-up of right carpal tunnel syndrome and left carpal tunnel syndrome, from nerve conduction study results. An MRI revealed a herniated cervical disc, which the claimant also reported to LaVada Williams and personnel at the Initial Care Facility. Dr. Muha referred him to Dr. Frederick Wade, who performed a cervical discectomy and fusion at C5-6 on December 12, 1995. He returned to work at Saturn in March, 1996 and was placed on disability in June, 1996. This civil action was commenced in November, 1996.

The above facts were included in the testimony of the claimant, whom the chancellor expressly found to be credible. Where the trial judge has seen and heard the witnesses, especially if credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995), because it is the trial court which had the opportunity to observe the witness's demeanor and hear the testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173 (Tenn. 1999).

Immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, an injured employee must, unless the employer has actual knowledge of the accident, give written notice of the injury to his employer. Tenn. Code Ann. § 50-6-201. It is significant that written notice is unnecessary in those situations where the employer has actual knowledge of the injury. Raines v. Shelby Williams Ind., Inc., 814 S.W.2d 346 (Tenn. 1991). The evidence fails to preponderate against the trial court's finding that Saturn had actual knowledge of the claimant's injury.

To be eligible for workers' compensation benefits, an employee must suffer an injury by accident arising out of and in the course of employment which causes either disablement or death. Tenn. Code Ann. § 50-6-102(12). An injury arises out of one's employment when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Fink v. Caudle, 856 S.W.2d 952 (Tenn. 1993).

Here, the employer contends the injury did not arise out of the employment because the employee's operating surgeon, Dr. Wade, testified that use of the screwdriver did not produce enough torque to cause the injury, in his opinion. To have accepted this argument, the trial judge would have had to disregard the testimony of Dr. Wilburn, who also treated the claimant, and Dr.

David Gaw, who examined and evaluated him.

Drs. Wilburn and Gaw opined that the claimant's injuries could have been caused by the repetitive gripping of his work. Moreover, Dr. Wade became equivocal when cross examined about the nature of the claimant's work. Where equivocal medical evidence is supported by other evidence, including the credible testimony of the employee, an inference of causation may be drawn by the trial judge. See Tindall v. Waring Park Assoc., 725 S.W.2d 935 (Tenn. 1987). Additionally, it is within the discretion of the trial judge to conclude that the opinion of certain experts should be accepted over that of other experts and that it contains the more probable explanation. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-7 (Tenn. 1983). For those reasons, the evidence fails to preponderate against the trial court's finding of causation.

For all of the above reasons, the judgment of the trial court is affirmed and the cause remanded to the Chancery Court for Davidson County. Costs on appeal are taxed to the appellant.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM